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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

SAM DeSTEFANO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

(People of the State of Illinois v. DeStefano, No. 39727)

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Sam DeStafano, prays that a writ of certiorari be issued to review the decision of the Supreme Court of Illinois in denying his Petition for Leave to Appeal from the decision of the Appellate Court of Illinois, First District affirming three sentences for contempt for which petitioner was sentenced to a year in the county jail and fined $2000.00.

Opinion Below.

The Opinion of the Appellate Court of Illinois, First District is reported at 64 Ill. App. 2d 368, 212 N.E. 2d 368 (1965), and is printed in this Petition as Appendix A.

Petition for leave to appeal to the Supreme Court of Illinois was denied on March 22, 1966 without opinion.

JURISDICTION OF THIS COURT.

1. The date of judgment sought to be reviewed was entered by the Supreme Court of Illinois on March 22, 1966, when the petition for leave to appeal was denied (R. 5). This petition for writ of certiorari is filed within ninety days from said denial.

2. The jurisdiction of this court is invoked under Title 28, United States Code, Section 1257 (3) and Rule 22(1) of the rules of this court.

QUESTIONS PRESENTED FOR REVIEW.

1. In the context of this trial, was it incumbent upon the trial court to order that inquiry be made of the defendant's sanity and competence to stand trial and to conduct his defense? Where the conduct of the defendant is such as to suggest that he presently suffered from mental illness, was it error for the trial court to deny the motion of the State for a sanity hearing?

2. Were the sentences imposed upon the defendant for his alleged misconduct during trial excessive and unreasonable and violative of rights guaranteed to him by the Eighth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF THE CASE.

During the course of a criminal trial charging the defendant with illegally voting and offering to vote,[1] the trial judge held the defendant in contempt in three separate orders.[2] On the trial the defendant, who was not an attorney, represented himself; he was assisted by an attorney as co-counsel.

For the alleged contempts the trial judge imposed sentences of one year each; these sentences to be served concurrently. On the third contempt order the judge also imposed a fine of two thousand dollars. (A. 11).[3]

The first of the alleged contempts occurred on the fourth day of the trial in a colloquy between the court and defendant. The defendant's co-counsel objected to an answer being given by a state's witness; the court ordered the attorney to keep his voice down and the defendant, in defense of the conduct of his co-counsel, stated to the court,

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[1]Petitioner had been convicted of a felony when he was 18 years of age, some 37 years before he voted. An Illinois statute, Sec. 29-26, Ch. 36, Ill. Rev. Stat. 1961 made it a criminal offense for a felon to vote without the Governor or a court restoring his citizenship rights. The refusal of the Illinois courts to hold the statute unconstitutional is the subject of a companion petition for certiorari filed here simultaneously.

[2]The three separate trial court's orders of contempt were consolidated on appeal in the Appellate Court of Illinois, First District and were there docketed under Nos. 50163, 50164, and 50165. The case No. in the Supreme Court of Illinois on Petition for Leave to Appeal is 39727.

[3]"A." refers to Abstract of Record in the three contempt cases, p. 3 of Record as certified to this court by the Clerk of the Supreme Court of Illinois.

"You were hollering at my co-counsel." For this statement the defendant was held in contempt and sentenced to one year imprisonment. (A. 3-4).

The second of the alleged contempts occurred four days later and also involved the question of whether one of the participants was speaking too loudly. The defendant, in attempting to justify the loudness of his own voice and the unreasonableness of the court's objection to it, stated that the prosecutor was also shouting. The court stated that this was a falsehood and held the defendant in contempt for the statement. The defendant was sentenced to one year imprisonment for this statement. (A. 6-7).

The third of the alleged contempts involved improper comments by the defendant during his closing argument. No objection was made to the argument by either the court or by the two prosecutors; and in fact, during the argument, the defendant was admonished to address his remarks to the jury and not to the court. For this allegedly improper argument the defendant was sentenced to one year imprisonment and fined two thousand dollars. (A. 8-11).

Six months before the start of the trial the State filed a motion requesting a sanity hearing for the defendant. (A. 16 in 50162)[4] The motion was denied. The record is replete with instances in which it appears that the defendant was in ill health throughout the trial. (A. 16, 19, 20, 21, 24, 28 and 58 in 50162).

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[4] In a companion petition for certiorari (see ftn. 1) the No. of the case in the Appellate Court of Illinois is 50162. The Abstract of Record is found in Supreme Court of Illinois case No. 39726 at Record p. 3. References to that Abstract in the instant Petition will be "A in 50162".

REASONS FOR GRANTING WRIT.

I.

This case raises the important question of federal law whether, once the sanity of the defendant has been placed in issue, the defendant is entitled to a hearing on this issue.

Prior to trial, the State moved for an order that the defendant's sanity be made the subject of a judicial inquiry (A. 16 in 50162). It must be assumed that the State's motion was made in good faith. The subsequent conduct of the defendant and his subsequent alleged misconduct, for which he was held in contempt, confirm the State's conclusion that the defendant was neither able to stand trial, nor to conduct his own defense.

It has been held that federal standards must be applied to determine whether a defendant is able to stand trial.

> "The answer appears to us that the Federal standard for competency must be applied even though the original proceeding was before a state court. Since this is a Federally recognized right, its determination must be by Federal standards. It should not be subject to the varying and perhaps lesser standards established by state law. It must be above dilution and equally applicable as a minimum guarantee to citizens of all states." *Noble* v. *Sigler,* 351 F. 2d 673, 677 (8 Cir. 1965).

The federal standards for competence to stand trial are set forth in *Dusky* v. *United States,* 362 U.S. 402, 80 S. Ct. 788, 4 L. ed 2d 824, 825 (1960), wherein this Court stated:

> "[T]he 'test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has

a rational as well as a factual understanding of the proceedings against him.' "

Petitioner respectfully submits that where the State moves for a sanity inquiry, where the defendant insists on acting as his own counsel, where it is evident that the defendant is in ill health throughout the trial, and where it is the very aberrant and bizarre conduct of the defendant which forms the basis of the contempt charges against him, that the trial judge had the responsibility, either during trial, or during his consideration of the contempt proceedings, to inquire into the mental health of the defendant and whether mental illness occasioned the conduct to which the court took offense.

There is no question that if the alleged contumacious conduct of the defendant occurred during a period when mental illness precluded him from forming the requisite intent, that the contempt convictions may not stand. *Panico* v. *United States,* 375 U.S. 29, 84 S. Ct. 19, 11 L. ed 2d 1 (1963).

The Seventh Circuit decided on May 3, 1965 that "in Illinois . . . the trial judge is required, whenever a bona fide doubt is raised as to defendant's sanity at the time of the trial, to impanel a jury and conduct a sanity hearing. *United States ex rel Robinson* v. *Pate, Warden,* 345 F.2d 691, 695 (1965).

This Court granted certiorari upon application by Illinois "to resolve the difficult questions of state-federal relations posed by these rulings." *Pate* v. *Robinson,* 382 U.S. 890, 15 L. ed. 2d 148, 86 S.Ct. 182 (1965).

On March 7, 1966, this court affirmed the ruling of the Seventh Circuit, *Pate* v. *Robinson,* ..... U.S. ....., 15 L. ed. 2d 815. Your Honors stated (p. 817), "We have concluded

that Robinson was constitutionally entitled to a hearing on the issue of his competence to stand trial."

In Robinson, as in the case at bar, ". . . the prosecutor himself suggested at trial that 'we should have Dr. Haines' testimony as to his opinion whether this man is sane or insane.' " (p. 821). Here, the State's Attorney moved for a sanity hearing. (A. 16 in 50162). The petitioner's conduct and behavior during trial which gave rise to the contempt conviction resulting in a year's confinement might have been the product of such mental illness as the State's motion suggests. At one point in his jury argument (for which argument he was sentenced to a year in the County Jail for contempt) he stated he was "not thinking right." (A. 58 in 50162).

This Court has held in *Pate* v. *Robinson* (p. 822) that ". . . where the evidence raises a 'bona fide doubt' as to defendant's competence to stand trial, the judge *on his own motion* must impanel a jury and conduct a sanity hearing pursuant to Ill. Rev. Stat. Chapter 38, Section 104-2 (1963)." (Emphasis added).

II.

The second reason for granting this writ is to determine whether the punishment is excessive as a matter of constitutional law.

Offutt v. *United States,* 348 U.S. 11 at 16 (1954), demonstrated that the instant case was not the only one in which trial judge and lawyer in a criminal case shouted at each other. However, this Court reversed the conviction of the lawyer, notwithstanding that the lawyer was sentenced to ten days in jail by the trial judge, which sentence was reduced to 48 hours by the Court of Appeals. *Offutt* v. *United States,* 208 F.2d 842 (D.C. Cir., 1953).

Mindful of the necessity for preserving the dignity of courts, your Honors stated:

> "The question with which we are concerned is not the reprehensibility of petitioner's conduct and the consequences which he should suffer. Our concern is with the fair administration of justice. The record discloses not a rare flare-up, not a show of envanescent irritation—a modicum of quick temper that must be allowed even judges. The record is persuasive that instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroiled with the petitioner. There was an intermittently continuous wrangle on an unedifying level between the two. For one reason or another the judge failed to impose his moral authority upon the proceedings. His behavior precluded that atmosphere of austerity which should especially dominate a criminal trial and which is indispensable for an appropriate sense of responsibility on the part of court, counsel and jury." (348 U.S. at 17).

Under all the circumstances of the case, the sentence was excessive and unnecessarily punitive.

Because of the many considerable mitigating circumstances, not the least of which were petitioner's illness, his lack of legal training, the failure by the prosecutors or the trial judge to intimate in the slightest their disapproval of the jury address, your Honors should grant this petition to review the sentence.

> "The punishment imposed [for contempt] must not be of such character as to savor of oppression and vengeance under the guise of upholding judicial dignity. Courts should never exercise more than the least possible power adequate to the end proposed." 17 C.J.S. 279-280.

Although we do not contend that a defendant arguing his own case has greater privileges than a lawyer, we respectfully submit that neither should such person be punished in excess of punishment meted out to lawyers who are, after all, officers of the court and trained in the law. We have found no case in which a *lawyer* was punished to such severe degree for conduct far more contemptuous than demonstrated in this case. A one year sentence in the County Jail, together with a fine of $2,000.00, exceeds the punishment for conduct during a jury trial in any single contempt case of which we are aware, either in the federal or state courts.

In sustaining the contempt conviction of a lawyer, Hallinan, the Tenth Circuit Court of Appeals said, (*Hallinan* v. *United States,* 182 F.2d 880 at 888, 1950):

> "An officer of a court has a higher duty to assist in maintaining the dignity and integrity of courts than does the ordinary citizen."

Yet, Hallinan was sentenced only to six months for his alleged continuous obstruction in his defense of Harry Bridges.

MacInnis, a *lawyer* in the same case was sentenced to three months. *MacInnis* v. *United States,* 191 F.2d 157 (10 Cir., 1951).

The lawyer in *In Re Maury,* 204 F. 626, was fined $500.00. There, the judge interrupted the jury address to admonish the lawyer's impropriety.

In *Sacher* v. *United States,* 343 U.S. 1 (1952), five *lawyers* were held in contempt of court for deliberately obstructing the good order of the trial throughout the nine months of a criminal case in which Communists were charged with

violation of the Smith Act, a federal offense. The lawyers were charged with deliberately delaying the prosecution, disregarding the judge's orders, and accusing the judge of wrong-doing and corruption, *United States* v. *Sacher, et al.*, 182 F. 2d 416 (2 Cir., 1950). The trial judge listed no less than 50 separate specifications of contempt—23 against Lawyer Sacher (six month sentence); 18 against lawyer Goldstein (six month sentence); 9 against lawyer Crockett (four month sentence); 7 against lawyer Isserman (four month sentence) and 6 against lawyer McCabe (thirty day sentence). The Court of Appeals stated, p. 420, that the acts of the *lawyers* were deliberately entered into in a cold and calculating manner (1) to cause such delay and confusion as to make it impossible to go on with the trial, (2) to provoke incidents intended to result in a mistrial, and (3) to impair the health of the judge so he could not continue with the trial.

And further, as the Appeals Court pointed out, p. 420:

> "The judge also said in his preliminary remarks that he would have overlooked the contemptuous conduct of counsel, or would have at most merely reprimanded them, if their conduct had appeared to be the result of the heat of controversy or zeal in the defense of a client, rather than deliberate contempt."

This Court said of the lawyers-defendants' behavior:

> "In addition, conviction is not based on an isolated instance or hasty contumacious speech or behavior, but upon a course of conduct long continued in the face of warnings that it was regarded by the court as contemptuous. The nature of the deportment was not such as merely to offend personal sentisitiveness of the judge, but it prejudiced the expenditious orderly and dispassionate conduct of the trial." (343 U.S. 5).

We invite comparison with the petitioner's conduct in the case at bar. When he made his address, he told the jury, "I tell you frankly, I am very upset at this moment and very angry and *I am not thinking right* . . . I am upset now." (A. 58 in 50162).

While waiting for his applications for bail to be acted upon in the various reviewing courts[5] petitioner served 87 days in the County Jail by virtue of the sentences herein imposed.

The trial judge here vented his anger on petitioner. (Cf. *Holt et al.* v. *Virginia,* 381 U.S. 131 (1965), where contempt fines of $50.00 each against two lawyers were reversed. The allegations of prejudice in a petition for a change of venue piqued the trial judge.)

Under the circumstances, the sentence here—three 1 year concurrent jail terms, plus a $2000.00 fine—smacks of punishment that is excessive, cruel and unusual. The Eighth and Fourteenth Amendments to the Constitution forbid it.

CONCLUSION

For either, or both, of the grounds asserted we pray this Petition be granted.

Respectfully submitted,

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Attorneys for Petitioner.

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[5] The Illinois Courts denied petitioner bail pending review upon application, Mr. Justice Clark allowed bail in the amount of $5000.00. Petitioner processed his appeals expeditiously.

APPENDIX

APPENDIX A.

PEOPLE OF THE STATE OF ILLINOIS, *Appellee*

vs.

SAM DESTEFANO, *Appellant*

(64 Ill. App. 2d 368; 212 N.E. 2d 368)

MR. JUSTICE MURPHY delivered the opinion of the court.

In three separate orders, defendant, Sam DeStefano, was found guilty of contempt of court for his conduct during a trial, wherein he was charged with and found guilty by verdict and judgment of "illegally offering to vote," the subject of a separate appeal in this court, No. 50162.

Although defendant had counsel of his own choice, he also acted *pro se* during the 11-day trial, from November 16, 1964, to November 27, 1964. After the conclusion of the trial, three separate orders were entered on December 9, 1964, finding him guilty of direct contempt on November 20, 24, and 27, 1964. For each contempt, defendant was sentenced to the County Jail for a term of one year, and the sentences were ordered to run concurrently. The third order also imposed a fine of $2,000.

On defendant's motion, the three separate appeals from the contempt orders, Nos. 50163, 50164, and 50165, were consolidated and are considered as one appeal. Also, on defendant's motion, the Record and Abstract filed in appeal No. 50162 were allowed to stand as the Additional Record and Additional Abstract in the instant three appeals.

The three contempt orders are as follows:

Appeal No. 50163—contempt of November 20, 1964:

"Now, in the name and by the authority of the People of the State of Illinois, the defendant, Sam DeStefano, being present in his own proper person, the matter against said defendant of alleged direct contempt is considered by this court.

And, thereupon, the Court finds as follows:

1. That on November 20, 1964, being one of the days of the November term A.D. 1964 of the Circuit Court of Cook County, Criminal Division, the case of People of the State of Illinois vs. Sam DeStefano, Indictment No. 64-1435, Illegal Voting, come on to be heard in the regular course before the court.

2. That a petit jury had been duly impaneled and sworn to try the issues before them in said case.

3. That during the course of said case the defendant, Sam DeStefano, acted as his own counsel.

4. That throughout said trial which commenced on November 16, 1964, the court repeatedly asked said defendant, Sam DeStefano, to obey the court's rulings and instructions.

5. That on November 20, 1964, during the direct examination of witness, Mary Austin, the following took place:

Mr. Tuite, Assistant State's Attorney: • • • Q. Mrs. Austin what, if anything, happened after that, after the defendant, DeStefano, signed his name on that document?

A. Then he goes to the two girls that have the—

Mr. McDonald: Objection. Objection. It's obvious what this witness is doing. The witness is saying what—

The Court: Keep your voice down.

Mr. McDonald: I beg your pardon.

The Court: You don't have to holler at me.

Mr. McDonald: I am not hollering at your Honor.

Mr. DeStefano: Excuse me.

Mr. McDonald: This witness is reciting what is ordinarily done.

The Court: Sit down and be quiet.

Mr. DeStefano: May I address the Court?

The Court: No.

Mr. DeStefano: Exception. The Court won't let me address the Court.

The Court: Sit down and be quiet.

Mr. DeStefano: You were hollering at my co-counsel.

The Court: Step in the chambers.

(Whereupon, the following proceedings were had in chambers, outside the presence and hearing of the jury.)

The Court: I am citing Mr. DeStefano for contempt. On the record. Your remarks have been contemptuous. You totally disregard the Court's order and instructions. You have been warned many times. At the end of this trial, we will take action on it.

Mr. DeStefano: May I address the Court?

The Court: You may.

Mr. DeStefano: May I make a statement for the record? I didn't mean to, Your Honor. I didn't want to. But you were shouting at Mr. McDonald much more than he was raising his voice.

The Court: That's contempt, also.

6. That the conduct of the defendant, Sam DeStefano, which conduct of said defendant took place while this court was in open session, tended to impede and interrupt the proceedings and lessen the dignity of this Court.

The Court further finds that the defendant, who is now and here present in open Court, is by reason of said conduct of said defendant, guilty of direct contempt of this court in open court.

It is, therefore, Ordered, Considered and Adjudged, that the said defendant Sam DeStefano, because of said contempt as aforesaid be and he is hereby sentenced to confinement in the County Jail of Cook County, Illinois, for a term of one year from December 9, 1964, and after delivery of the body, of said defendant to Warden of the County Jail of Cook County, or until he is otherwise discharged by due process of law and the Sheriff of Cook County is hereby committed to take the body of said defendant from the bar of this Court and confine the same in the Cook County Jail in safe and secure custody for and during said term as aforesaid."

Appeal No. 50164—contempt of November 24, 1964:

"Now, in the name and by the authority of the People of the State of Illinois, the defendant Sam DeStefano being present in his own proper person, the matter against said defendant of alleged direct contempt of this court is considered by the Court.

And thereupon the Court finds as follows:

1. That on November 24, 1964, being one of the days of the November A.D. 1964 Term of the Circuit Court of Cook County, Criminal Division, the case of People of the State of Illinois versus Sam DeStefano, Indictment No. 64-1435, Illegal Voting, came up to be heard in the regular course before the Court.

2. That during the course of said case, the defendant, Sam DeStefano, acted as his own counsel.

3. That on November 24, 1964 said defendant Sam DeStefano presented a motion for a mistrial.

4. That during the hearing on the motion the following took place between the Court and defendant, Sam DeStefano.

The Court: Proceed, proceed.

Mr. DeStefano: Mr. Martin is also suborning perjury—

The Court: Stop screaming at the Court. There is no need to yell at the top of your voice in this courtroom.

Mr. DeStefano: Are you speaking only to the defendant, pro se, sir?

The Court: Yes, I am speaking to you because you are shouting and they are not shouting.

Mr. DeStefano: They were not shouting, sir? Let the record show that both—not both, Mr. Tuite was shouting when he interrupted me and continued shouting afterwards. That the defendant, pro se, does not shout. He does have strong lungs even though the rest of his body isn't as well as his lungs.

The Court: I cite you for contempt on that because Mr. Tuite did not shout at you.

Mr. DeStefano: He was shouting.

The Court: You are stating a falsehood when you say that he did shout because he did not raise his voice and shout.

5. That the conduct of the defendant, Sam DeStefano, which conduct of said defendant took place while this Court was in open session, tended to impede and interrupt the proceedings and lessen the dignity of this Court.

The Court further finds that the defendant, who is now and here present in open Court, is by reason of said conduct of said defendant, guilty of direct contempt of this court in open Court.

It is, therefore, Ordered, Considered and Adjudged, that the defendant, Sam DeStefano, because of said contempt as aforesaid be and he is hereby sentenced to confinement in the County Jail of Cook County, Illinois for a term of one year from after December 9, 1964, delivery of the body of said defendant to Warden of the County Jail of Cook County, or until he is otherwise discharged by due process of law and the Sheriff of Cook County is hereby committed to take the body of said defendant from the bar of this Court and confine the same in the Cook County Jail in safe and secure custody for and during said term as aforesaid."

Appeal No. 50165—contempt of November 27, 1964:

"Now, in the name and by the authority of the People of the State of Illinois, the defendant Sam DeStefano being present in his own proper person, the matter against said defendant of alleged direct contempt of this court is considered by the Court.

And thereupon the Court finds as follows:

1. That on November 27, 1964, being one of the days of the November A.D. 1964 Term of the Circuit Court of Cook County, the case of People of the State of Illinois vs. Sam DeStefano, Indictment No. 64-1435, Illegal Voting, came on to be heard in the regular course before the Court.

2. That a jury was duly impaneled and sworn to try the issues before them.

3. That the defendant Sam DeStefano during the course of the trial acted as his own counsel.

4. That on November 27, 1964, the defendant delivered a closing argument in the jury selected in the above mentioned case.

5. That the defendant, Sam DeStefano made, among other things in this closing argument to the jury the following statements:

I want to also thank his honor for showing me and you people that I, the defendant Sam DeStefano, cannot get a fair trial. I think the Cardinal Mindzenty of Hungary received a fairer trial from the Russian communists than we received from this court and the State.

6. That in the same closing argument to the jury the defendant Sam DeStefano also made the following statements:

What I can't understand, here is a man on our bench, approximately 56 years old, who has always been known as a mild mannered man, a soft-spoken

man. This man, Judge Herbert R. Friedlund, until this trial has been known as a fair, impartial, merciful judge. He was known as a good lawyer before he came upon the bench. He has a reputation throughout our country and state as a mild, fair gentleman at all times with an unblemished record.

What I can't understand is where this viciousness, where this man who was so mild all of a sudden became vicious, angry and treated this defendant and the spectators and the defendant's co-counsel as he has done in the past ten or twelve days. That, I can't understand. I know the man for what he has been. I don't know this man that has treated the defendant Sam DeStefano as he has done and made him belabor out here with the threat of contempt over and over again.

7. That in the same closing argument to the jury the defendant Sam DeStefano also made the following statements:

Lord Coke of England in 1620, and Pope Innocent, III at around 1200 A.D. their bones must be turning over in their graves knowing what your Honor has done to this defendant, knowing the rulings, two great lawmakers such as them. That is the language that your Honor understands. Certainly, you must have learned and read of Lord Coke, one of our greatest lawmakers.

The Court: Talk to the jury.

Mr. DeStefano: I am talking to them, sir, when I am addressing you. Or Pope Innocent, III, the greatest lawmaker that ever sat on the papal chair. I'll bet you his bones are turning over this day.

Some day, Judge, you will sit in silence with your own conscience and say this is the dirtiest day's work you have ever done. You, sir, a man who was always so kind before, but this is the dirtiest day's work you have ever done.

How? Why? I would like to know the answer. I would give anything to know that answer, how a man like you could turn like this. For 56 years unblemished, and then so cruelly and inhumanly browbeat a defendant and his co-counsel like this.

All of you people heard Mr. McDonnell. He is not only my co-counsel but a very dear friend of mine. We associate together, and I am proud, and that's where I learned a little bit of my law. We have been together for a long time. He spends a great deal of time in my home and I spend a great deal of time in his home.

Now, if you recall, when Attorney McDonnell made that objection he really didn't shout loud. It was the judge who angrily tried to browbeat him. And I jumped up to object because he was prejudicing my case. He took me in for contempt of court. And he was the one that committed the crime. But it is a weak judge, a weak judge who holds the whip of contempt of court over a citizen.

8. That the conduct of the defendant, Sam DeStefano, which conduct of said defendant took place while this Court was in open session and before a jury tended to lessen the authority and dignity of this Court.

It is, therefore, Ordered, Considered and Adjudged, that the said defendant, Sam DeStefano, because of said contempt as aforesaid be and he is hereby sentenced to confinement in the County Jail of Cook County, Illinois for a term of one year from December 9, 1964, and after delivery of the body of said defendant to Warden of the County Jail of Cook County, or until he is otherwise discharged by due process of law and the Sheriff of Cook County is hereby committed to take the body of said defendant from the bar of this Court and confine the same in the Cook County Jail in safe and secure custody for and during said term

as aforesaid. And I further fine the Defendant, Sam DeStefano, the sum of Two thousand dollars for his contempt."

Defendant's contentions here are: (1) the recitals in the orders are not complete; (2) the conduct of defendant was not *per se* contemptuous under the circumstances; (3) the court failed to take into consideration defendant's ill health and his lack of legal training; and (4) the sentences were excessive and unnecessarily punitive.

We consider first defendant's contention that the recitals in the orders are not complete. He argues the orders do not include necessary language, and for that reason they are defective and should be reversed. We agree that it is necessary for the trial court to enter a written order setting forth fully and clearly the facts out of which the contempt arose. (*People* v. *Rongetti,* 344 Ill. 107, 176 N.E. 292 (1931).) All the essential facts must be fully set forth, and no part thereof can be supplied by presumptions or inferences. However, an order may be so drawn as to include matters by reference, and on review such matters so incorporated may be considered as part of the order. *People* v. *Tavernier,* 384 Ill. 388, 51 N.E.2d 528 (1943).

As to the order covering the contempt of November 20, 1964, defendant argues that "there nowhere appears in the order any of the court's rulings or instructions, which the order states the court *repeatedly* asked defendant to obey. Nor does the recital in the order state that the defendant *failed* to obey such court's rulings and instructions." As to the order for the contempt of November 24, 1964, defendant states, "The recital order sets out only a part of the proceedings which took place. For if, as is apparent from the recital order the only reason the court held the defendant in contempt was that he stated that Mr.

Tuite, the prosecutor was shouting also, it would be unfair not to permit the twenty-one persons in the audience to given sworn testimony to the fact that Mr. Tuite also shouted." As to the order for the contempt of November 27, 1964, defendant notes that "the recital order * * * stated that during the closing argument to the jury the defendant 'made, *among other things* in this closing argument to the jury the following statements * * *.' Thereafter, the court excerpted certain of the statements which it deemed to be contemptuous."

An examination of the orders to ascertain the merits of this contention shows that the order for the November 20 contempt states defendant was told twice to "sit down and be quiet," and his remarks included, "You were hollering at my co-counsel." This was in the presence of the jury. In chambers, and in citing defendant for contempt, the court said, "Your remarks have been contemptuous. You totally disregard the Court's order and instructions. You have been warned many times. At the end of this trial, we will take action on it," and defendant's remarks in reply included, "But you were shouting at Mr. McDonald much more than he was raising his voice." This colloquy in open court and in chambers demonstrates contemptuous conduct *per se*.

The order for the contempt of November 24 shows a colloquy between the court and defendant, and that after defendant was directed to "stop screaming at the Court. There is no need to yell at the top of your voice in this courtroom," he made disrespectful remarks to the court. At defendant's suggestion, we have examined the Abstract filed in appeal No. 50162 and note that the recital order does not include all of the proceedings which then took place, including the following:

"The Court: I don't know what you think you are accomplishing by screaming at me.

Mr. DeStefano: Well, your Honor, I am not screaming at you. You stand here and let him call me an ex-convict. If you have any personal animosity against me you know what to do. You know where I live, I don't know where you live. Why don't you send me an invitation?"

The foregoing excerpt from the colloquy of November 24 does not militate against a finding that the recital part of the order is sufficient to demonstrate contemptuous conduct *per se*. Likewise, the order covering the contempt of November 27 amply manifests contemptuous conduct *per se*. We hold that the recitals in each of these three contempt orders are sufficient to sustain a finding of contempt in each instance.

We consider next defendant's contention that his conduct "was not per se contemptuous under the circumstances." Defendant argues that he was not a lawyer, and that he was on trial from November 16, 1964, to November 27, 1964, charged with a crime never before prosecuted in this state; "he was, as he put it, fighting for his life. * * * The stress and strain on a defendant while standing criminal trial is considerable. How much more when that defendant chooses (foolishly perhaps) to represent himself and engages in colloquy and argument with court and prosecutor?" He further states, "We believe that every judge who has had the experience of presiding over criminal trials has had to caution counsel at one time or another to keep his voice down—both counsel for the State and for defendant. If every time a voice was raised above normal speech level, there was an order of contempt, the bar of criminal practitioners would be decimated for such periods of time as the courts imposed sentences."

Defendant further states that in his address to the jury, "the thrust of defendant's argument was that he received an unfair trial at the hands of the court," and his remarks related to "the court's conduct of the trial." He asserts because no objections or attempts were made to stop the defendant from proceeding with the kind of argument he was presenting to the jury, " defendant was led to believe that his remarks to the jury were not improper; for otherwise, there would have been objections. At the outset of his remarks, the defendant apologized to the jurors for all the time that was wasted, but stated that it was not the fault of the defense, but that it was fault of either the State or the court. *Both* prosecutors objected; and the court struck the remarks of the defendant." He argues, "The court's failure to interject during the closing argument, and the failure of the prosecutor to make any protest, militates against the finding that defendant's remarks to the jury 'tended to lessen the authority and dignity of this court.' "

In reply, the State argues that the contempt order for defendant's conduct of November 20 shows that the defendant, "in the presence of the jury reprimanded the Court," and "this conduct tend[ed] to impede the proceedings and disrupt the orderly process of a trial," and "four days later the Court held the defendant in contempt once more." The State asserts, "[at that time] the defendant questioned the Court's veracity and blatantly accused the Court of stating a falsehood when the Court said the prosecutor was not shouting. This conduct surely brought the administration of justice into disrespect." As to the third contempt, the State comments that "during his closing argument (or rather, tirade) Mr. DeStefano made an attack upon the Court in what will probably go down in legal history as the most contemptuous perform-

ance ever seen or heard. It seemed as if the contemnor was delivering a speech on how to be contemptuous by really trying."

The guidelines to be used in reviewing contempt orders are set forth in *People* v. *Loughran*, 2 Ill.2d 258, 118 N.E. 2d 310 (1954). On page 262, the court said:

> "'All courts are vested with an inherent power to punish for contempt as an essential incident to the maintenance of their authority and the administration and execution of their judicial powers. A summary proceeding to punish for direct contempt, properly used within the discretion of the court, is not a violation of the constitutional guarantee of due process. *In re Terry*, 128 U.S. 289; *People* v. *Siegal*, 400 Ill. 208."

On page 263, the court said:

> "In a direct criminal contempt proceeding, that is, for contempts committed in the presence of the judge, in court, which he observes and has personal knowledge of, no formal charge is filed and no plea, issue or trial is required. (*In re Terry*, 128 U.S. 289, 9 S.Ct. 77.) The contempt having been committed in the presence of the court, evidence is unnecessary and no record is made. (*People ex rel. Owens* v. *Hogan*, 256 Ill. 496.) However, the accused has a right of appeal, and it is, therefore, necessary for the court to enter a written order setting forth fully and clearly the facts out of which the contempt arose so that the reviewing court may determine if the committing court had jurisdiction to enter the order. (*People* v. *Rongetti*, 344 Ill. 107.) All the essential facts must be fully set forth and no part thereof can be supplied by presumptions or inferences (*People* v. *Tavernier*, 384 Ill. 388), and no facts which did not occur in the presence of the

court should be taken into consideration by the court in adjudging guilt or in fixing the punishment. *People* v. *Rongetti*, 344 Ill. 107.

"The power to adjudge guilt and impose punishment without proof or examination, and without plea, trial or issue exists in no other situation or proceeding. It is an exception to our constitutional guarantees which we would regard as intolerable in any other proceeding or for any other purpose. It is readily susceptible of abuse and fraught with danger not only to personal liberties but to the respect and confidence which our courts must maintain. Although such a power is universally recognized as essential to an orderly and effective administration and execution of justice, it should be exercised with utmost caution and strictly restricted to acts and facts seen and known by the court, and no matter resting upon opinions, conclusions, presumptions or inferences should be considered."

The following pronouncements are also pertinent here. Conduct which tends to embarrass or obstruct the court in the administration of justice, or which tends to bring the administration of the law into disrespect or disregard, constitutes a direct contempt and is punishable as such. (*People* v. *Gard*, 259 Ill. 238, 242, 102 N.E. 255 (1913).) Statements reflecting on the personal integrity of a judge in a suit that is pending before such judge is contempt of court. (*Kneisel* v. *Ursus Motor Co.*, 234 Ill. App. 371, 380 (1924).) "A trial properly conducted is a dignified procedure. * * * Often in the heat and fervor of a sharply contested trial these standards are forgotten. Too often they are not only forgotten but completely disregarded and dragged in the mire. Objections properly made are address to the court and counsel is entitled to

state his reasons for his objections, but an inflammatory statement accompanying each objection, apparently made solely for the purpose of prejudicing the jury, is improper. Abuse of opposing counsel and of the court has no proper place in a trial. All of these matters rest within the control of the trial court, and the trial court has the power and duty to preserve decorum. The trial court can and should institute contempt proceedings against recalcitrant counsel and impose either a fine or jail sentence." *Eizerman* v. *Behn*, 9 Ill. App.2d 263, 286, 287, 132 N.E.2d 788 (1956).

In contempt proceedings, no matter how fully and clearly the facts are set forth, the recital part of the order cannot convey the complete picture of the courtroom scene. It does not depict such elements of misbehavior as expression, manner of speaking, bearing and attitude of the respondent. "Reliance must be placed upon the fairness and objectivity of the presiding judge. The occurrence must be viewed as a unit in order to appraise properly the misconduct, and the relationship of the petitioner as an officer of the court must not be lost sight of." (*Fisher* v. *Pace*, 336 U.S. 155, 161 (1949).) See, also, *Sacher* v. *United States*, 343 U.S. 1 (1952), where the court said (pp. 10, 11):

> "In this case counsel repeatedly were warned that their conduct was regarded as contemptuous. No claim can be made that the judge awaited the close of the trial to pounce upon them for some offense unnoted at the time it occurred. If we were to hold that summary punishment can be imposed only instantly upon the event, it would be an incentive to pronounce, while smarting under the irritation of the contemptuous act, what should be a well-considered judgment. We think it less likely that unfair condem-

nation of counsel will occur if the more deliberate course be permitted. * * * We hold, * * * that if [the trial judge] believes the exigencies of the trial require that he defer judgment until its completion he may do so without extinguishing his power."

When a defendant in a criminal trial undertakes to exercise his constitutional right to conduct and manage his own case *pro se,* it necessarily follows that he cannot embarrass or obstruct the court during the course of the trial. He does not have the right to let his temper, his zeal or his intention lead him into disrespectful, accusative language to the court. The trial court must, of necessity, maintain order and decorum in its presence. To sanction such conduct in open Court before a jury, would be to demoralize the authority of the court before the jury and the public. See *MacInnis* v. *United States,* 191 F.2d 157, 159 (1951). Whether a contempt has been committed depends upon the act and not the alleged intention of the offending party. *Kneisel* v. *Ursus Motor Co.,* 316 Ill. 336, 342, 147 N.E. 243 (1925).

Considering the instant contempt orders in the light of the foregoing, we hold that the recitals in each of the three orders, of the facts which occurred in open court and in the presence of the court and jury during the trial, were sufficient for the entry of summary contempt orders and within the inherent power of the trial court. It was within the court's sound discretion to enter the orders after defendant's criminal trial had concluded, because the entry of the contempt orders on the occurrence dates might have endangered the due progress and termination of a difficult and extended trial.

Finally, the defendant contends that the court failed to take into consideration defendant's ill health and defend-

ant's lack of legal training, and "under all the circumstances of the case the sentence was excessive and unnecessarily punitive."

Defendant argues, "We do not contend, as a matter of law, that a defendant representing himself has any greater privilege than a lawyer trained in the art of trial. We do contend, as a practical matter, that a defendant trying his own case cannot lessen the dignity of the court in complaining to a jury that he received an unfair trial at the hands of the court. However inept and artless his remarks may have been, certainly the jury must have considered that remarks, which may not have been in good taste, came from a defendant who was not a lawyer, and against whom a felony conviction had been proved." Also, defendant argues that the sentence and fine "exceeds the punishment for conduct during a trial in any single contempt case of which we are aware, either in the federal or state courts." Instances are cited where lawyers, found guilty of contempt, have been fined or sentenced from ten days to six months.

In reply, the State argues that "during the trial the defendant made objections and moved for mistrials when he thought it was appropriate. All this clearly shows that the defendant did have more than a rudimentary understanding of the law. In fact, when he wanted to, he acted as an attorney. The plea that the contemnor was without legal training and therefore should in some way mitigate his conduct is without merit," and further, "how the defendant's claimed ill health could excuse or mitigate his scurrilous attack on the court or his other reprehensible conduct and serve as a bar or shield and refuge is beyond comprehension. Has physical illness ever been a defense to a crime?"

We find the instant contempt orders recite flagrant misconduct, disrespect and open defiance of the court's authority, continued in the face of repeated warnings and findings of contempt during the trial. These contempts clearly embarrassed the court, disrupted and defeated the prompt and fair administration of justice. No court should permit such gross, deliberate and blatant disrespect for the court to go unpunished, whether by a lawyer or by a layman acting *pro se* in his own defense. Our courts could not long endure under such circumstances. Remarks made in *Hallinan* v. *United States,* 182 F.2d 880 (1950), are apropos here (pp. 887-888):

> "Complaint is made as to the severity of the sentence. It is severe. We are unable to say the Court abused its discretion in imposing it. Gross misconduct merits commensurate punishment. We cannot have the same appreciation of an existing situation, from a review of a cold record, as does a presiding judge who witnesses the transgressions and senses the unfavorable impact upon the orderly administration of justice. An officer of a court has a higher duty to assist in maintaining the dignity and integrity of courts than does the ordinary citizen. True, every lawyer, if he is worthy of the name, must use every legitimate effort in support of his client and in so doing will be relieved from an improper contempt judgment. * * * No such condition exists here. The record reflects quite the contrary."

For the reasons given, the three orders of contempt appealed from, consolidated and considered as one appeal, are affirmed, and as the County Jail sentences are to be served concurrently, we see no reason to disturb them.

Affirmed.

BURMAN, P.J., and KLUCZYNSKI, J., concur.

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Supreme Court of the United States

OCTOBER TERM, A. D. 1966

NO. 187

SAM De STEFANO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(Petition for Writ of *Certiorari* to the Supreme Court of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

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(Petition for Writ of *Certiorari* to the Supreme Court of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION

ARGUMENT

I.

ALTHOUGH THIS QUESTION IS NOT PROPERLY BEFORE THIS COURT, THE TRIAL COURT HEREIN WAS UNDER NO DUTY TO INQUIRE AS TO DEFENDANT'S COMPETENCY TO STAND TRIAL SINCE THERE WAS NEITHER A REQUEST BY DEFENDANT NOR ANY BONA FIDE DOUBT ON THE PART OF THE TRIAL JUDGE.

The first question presented for review by petitioner is one that was not urged or briefed below and hence is not properly before this Court. *California* v. *Taylor,* 353 U. S. 553, 557; *Kay* v. *United States,* 303 U. S. 1.

If this question were considered, however, it is clearly invalid on the merits. Petitioner relies upon *Pate* v. *Robinson,* 86 Sup. Ct. 836 and argues that the failure of the trial court to make inquiry concerning the competence of the petitioner was a constitutional violation. This argument is predicated upon the assertion that prior to trial the State moved for an order that the defendant's sanity be made the subject of a judicial inquiry.

In *Pate* v. *Robinson,* after a detailed discussion of the evidence touching upon the question of Robinson's competence, this Court concluded that the evidence introduced on Robinson's behalf entitled him to a hearing on that issue.

However, the record herein shows that some five months prior to trial the State made an oral motion for a behavior clinic examination on the basis that ". . . at some time in

the past . . . the accused did receive psychiatric treatment . . ." (Rec. pp. 36-38). The record also shows that the defendant, proceeding *pro se,* objected strenuously and the trial court denied the motion saying that he found ". . . no evidence at this time that this man needs any competency hearing." (Rec. p. 38).

Hence respondent submits that the *Robinson* case is clearly not applicable. Here there was no evidence on the issue of incompetency. Moreover petitioner had filed numerous pretrial motions and argued at length in support thereof, in addition to arguing in opposition to the State's motion for behavior clinic examination, which arguments clearly indicated his competence.

To raise the question of incompetence is the duty and responsibility of a defendant. Defendant did not raise this question at any time prior to this petition and moreover objected strongly to the State's motion. Nor did the court on its own motion have that duty since no *bona fide* doubt can be said to have arisen from the State's oral motion. The State merely asked for a behavior clinic examination, a *pro forma* motion and something substantially less than a motion for a competency hearing under Ill. Rev. Stat. 1965, ch. 38, par. 104-2, and there was simply no supporting evidence to warrant an order requiring one.

II.

THE SENTENCES SUMMARILY IMPOSED FOR DIRECT CRIMINAL CONTEMPT WERE NOT, AS A MATTER OF CONSTITUTIONAL LAW, EXCESSIVE.

For each of three separate orders of contempt of court during his trial petitioner was sentenced to the county jail for a term of one year, and the sentences were ordered

to run concurrently. The third order also imposed a fine of $2000. This, petitioner argues, "smacks" of punishment that is excessive, cruel and unusual, which punishment is proscribed by the Eighth and Fourteenth Amendments to the Constitution.

Petitioner's assertion that the sentence is excessive is supported by no valid reasons on the merits, but only on the basis that no case has been found in which a lawyer was punished to such a degree and therefore neither should a layman arguing *pro se* be so punished.

Respondent submits that either a fine or imprisonment, or both, are proper punishment in a contempt case, *People* v. *Loughran,* 2 Ill. 2d 258; *People* v. *Tavernier,* 384 Ill. 388. The punishment actually levied however rests solely in the trial court's sound discretion and that judgment should not be disturbed on appeal unless the reviewing court finds that that discretion was grossly abused. *Brown* v. *United States,* 359 U. S. 41, 52; *Hallinan* v. *United States,* 182 F. 2d 880 (9th Cir. 1950); *MacInnis* v. *United States,* 191 F. 2d 157 (9th Cir. 1951). The Appellate Court of Illinois found that the instant contempt orders recite flagrant misconduct, disrespect and open defiance of the court's authority, continued in the face of repeated warnings and findings of contempt during the trial. These contempts, the opinion continues, clearly embarrassed the court, and disrupted and defeated the prompt and fair administration of justice. *People* v. *DeStefano,* 64 Ill. App. 2d 368 at 383. The behavior punished took place in the immediate presence of the trial judge and the misconduct was professional in that it was that of a layman acting as his own lawyer. *Sacher* v. *United States,* 343 U. S. 1, 5. Clearly, respondent submits, the discretion of the trial judge was not herein abused, and therefore the sentence imposed should not be disturbed.

III.

A STATE IS NOT CONSTITUTIONALLY REQUIRED TO GRANT A JURY TRIAL IN CASES OF CRIMINAL CONTEMPT EVEN WHERE THE SENTENCE IMPOSED EXCEEDS SIX MONTHS.

Finally, although this point was not urged or briefed below before the Illinois Appellate Court, and can not be properly considered by this Court, petitioner argues by amendment to his petition that in view of *Cheff* v. *Schnackenberg*, 384 U. S. 373, the writ should be granted to make known whether a state is required to grant a jury trial in cases of criminal contempt where sentence exceeds six months.

Respondent submits, however, even if this point were to be considered, that that further ruling in *Cheff* relied upon herein, that sentences exceeding six months for criminal contempt may not be imposed by federal courts unless a jury trial has been received or waived, was rendered in the exercise of this Court's supervisory power. That ruling was not therefore a constitutional mandate incumbent upon the several states.

There is a long unbroken line of decisions both in the Supreme Court of Illinois (see *People* v. *Goss*, 10 Ill. 2d 533, 548) and this Court (see *Green* v. *United States*, 356 U. S. 165, 183) declaring and reaffirming that criminal contempts are not subject to jury trial as a matter of constitutional right. Moreover, the exercise of summary contempt power is not restricted to offenses that may be classified as petty but applies as well where the offense is a serious one. *United States* v. *Barnett*, 376 U. S. 681.

Two recent decisions of the Supreme Court of Illinois reaffirmed the theretofore consistently maintained position

that the right to trial by jury is not available in a proceeding for criminal contempt. Each decision took note of the *Cheff* case. In *People* v. *Bloom,* 35 Ill. 2d 255, the Court affirmed a twenty-four (24) month summary sentence for contempt imposed upon an attorney, and in *People ex rel. Stollar* v. *Ogilvie,* No. 39768, Supreme Court of Illinois, November 14, 1966, the Court affirmed an eighteen (18) month sentence and said in part, ". . . [W]e are not persuaded that it is either necessary or desirable to require trial by jury in criminal contempt cases and thus alter the existing law of this State . . ."

It is contended that this position is valid. By common law a jury trial was never available in the case of a direct contempt, and the fact that this Court in its supervisory capacity over federal courts requires one where the sentence is over six months, does not make such a rule a constitutional requirement binding upon the states.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the petition for writ of *certiorari* should be denied.

Respectfully submitted,

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ANSWER BRIEF

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SAM DeSTEFANO,

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vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ANSWER OF PETITIONER TO RESPONDENT'S BRIEF

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ANSWER OF PETITIONER TO RESPONDENT'S BRIEF

I.

The question for review was raised at the appellate level in the Illinois courts when petitioner argued that his ill-health was not properly taken into consideration by the court (See Brief of Petitioner in Appellate Court of Illinois, Nos. 50163, 50164, 50165, consolidated).

On page 19 of said brief, petitioner pointed out that "throughout all of the preliminary proceedings and throughout the entirety of the eleven days of trial, defendant was in ill health, so much so that when he made his final argument he was 'not thinking right' (A. 58 in

50162).[1] In the preliminary proceedings on arraignment, defendant was brought into court on a cot, seriously ill from abdominal surgery (A. 16 in 50162). On May 25, 1964, he asked and obtained the court's permission to argue while seated because of his previous operation (A. 16). *At that time the State filed a motion requesting a sanity hearing for the defendant* (A. 16 in 60162). At another time during the court proceedings, defendant requested permission to sit down while arguing because of his ill-health (A. 19 in 50162). On September 13, 1964, while arguing motions for a change of venue due to the waive of prejudicial publicity against him, he was given permission to argue matters while sitting in a wheel chair (A. 20 in 50162).

On October 7, 1964, he requested and obtained permission to address the court from his chair because of his illness (A. 21 in 50162).

Thus, the matters presented here for review were called to the attention of the court below. The State fails to answer the holding in *Pate* v. *Robinson*, ... U.S. ....., 15 L.ed. 815, 86 S.Ct. 836. Not only did the State move the court for a psychiatric examination before trial, it advised the court that " . . . the accused did receive psychiatric treatment" at some time in the past. (Resp. Br. 3). Because the petitioner objected to such a psychiatric examination and competency hearing, the State now argues that the court was correct in denying the hearing.

Even if the trial judge was correct at the time this ruling was made, it became obvious during the course of

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[1] This reference is to the Abstract of Record as filed in the Appellate Court of Illinois, First District in case No. 50162, the companion case, for conduct in which petitioner was found guilty of contempt.

the trial that petitioner's erratic and bizarre behavior was abnormal in the extreme; and it *then* became the court's duty to hold a competency hearing—whether petitioner objected or not. If, in fact, the petitioner were incompetent, he could not waive any constitutional right. And as it was just that conduct and behavior during trial which gave rise to the contempt convictions resulting in a year's confinement. A *bona fide* doubt as to petitioner's competence to stand trial existed. This Court concluded in *Pate* v. *Robinson*, ... U.S. ....., 15 L.ed. 2d at 822 that, pursuant to the Illinois Revised Statutes, Chap. 38, Section 104-2 (1963), " . . . the judge on his own motion must impanel a jury and conduct a sanity hearing . . . "

As federal standards must be applied to determine whether a defendant is able to stand trial, *Noble* v. *Sigler*, 351 F.2d 673, 677 (8 Cir., 1965), this Petition should be allowed in order that the question here should be determined on the facts presented.

II.

Petitioner argues his punishment—three concurrent one year sentences each with a fine of $2,000—was excessive punishment in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

Petitioner cited cases in which attorneys punished for contemptuous conduct far more extreme than in the case at bar were, in no instance, sentenced to more than six months—and in most instances to a term much less. Petitioner had already served 87 days of his sentence before Mr. Justice Clark allowed bail pending review.[2]

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[2] Had the bail not been granted by this Court, petitioner would have served his sentence completely; and an injustice would have been done because the matters would now be moot.

The State responds that the discretion of the trial judge was not abused; it cites three federal and two state cases. In *People* v. *Loughran*, 2 Ill. 2d 858, the lawyer was sentenced to three days only and that conviction was reversed. In *People* v. *Tavernier*, 384 Ill. 388, the contemnor was sentenced for refusing to answer questions before a grand jury and was sentenced to six months in the county jail and fined. (That sentence was reversed on other grounds). Hallinan, an attorney, was given six months for contemptuous conduct far in excess of what was revealed in the record here. *Hallinan* v. *United States*, 182 F.2d 880 (9 Cir., 1950). His co-counsel, attorney MacInnis, was sentenced to three months for his contemptuous conduct. *McInnis* v. *United States*, 191 F.2d 157 (9 Cir., 1951).

And lastly, the respondent cited *Sacher* v. *United States*, 343 U.S. 1. At pp. 9-10 of the Petition filed here, we pointed out the punishments in the *Sacher* case. Attorney Sacher, against whom were there listed 23 separate specifications of contempt, received a sentence of six months; attorney Goldstein, a sentence of six months for 18 separate specifications; attorney Crockett, a four month sentence for nine separate specifications; attorney Isserman, a four month sentence for seven separate specifications; and attorney McCabe, a thirty day sentence for six separate specifications.

And those sentences in a case where the Court of Appeals stated, *United States* v. *Sacher, et al.*, 182 F.2d 416, 420 (2 Cir., 1950) that the conduct of the lawyers were deliberately entered into in a cold and calculating manner to delay and frustrate the trial in order to provoke incidents which would result in a mistrial and to impair the health of the trial judge.

Such conduct and punishment therefore, is a far cry from the conduct of an admittedly ill person who was defending himself under extreme provocation and who, when he addressed the jury stated, " . . . I am not thinking right . . . I am upset now." (A. 58 in 50162).

III.

Cheff v. *Schnackenberg,* 384 U.S. 337, was not decided when petitioner filed his original petition on May 31, 1966. One week later, on June 6, 1966, this Court's decision was handed down.

Although this point was not briefed in the Illinois Appellate Court, there is no question but that—from the argument of respondent—the Illinois courts would reject the holding of *Cheff*. The State cited two Illinois cases decided after *Cheff,* in which "each decision took note of the *Cheff* case." (Resp. Br. 6).

It is for this reason that certiorari should be granted to make known whether this Court's decision in *Cheff* is applicable in contempt proceedings in state courts.

Cheff followed *United States* v. *Barnett,* 376 U.S. 681, 12 L.ed. 2d 23, 84 S.Ct. 984 (1964), in which it was pointed out in note 12 of the Opinion (12 L. ed. 2d 33) " . . . our cases have indicated that irrespective of the severity of the offense, the severity of the penalty imposed . . . might entitle a defendant to the benefit of a jury trial.", citing *District of Columbia* v. *Clawans,* 300 U.S. 617.

Accordingly, this Court should make known its views with respect to the procedure in contempt cases in state trials where punishment exceeds six months. It would be in accord with the endeavors of this Court to attempt a standardization of procedures in administering justice throughout the state and the federal systems.

CONCLUSION

For any or all of the foregoing reasons, petitioner respectfully prays that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

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